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No. _____

In The

Supreme Court of the United States

LUC J. R. MARTINI,

Petitioner,

v.

VIRGINIA M. GEIER,

Respondent.

On Petition For Writ Of Certiorari To The King County Superior Court Of The State Of Washington

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does Due Process require that a person accused of harassment in a civil action for an anti-harassment protection order be permitted to cross-examine his accuser at the "full hearing" on issuance of the order?

2. Does the Due Process Clause guarantee the defendant in a civil action for an anti-harassment protection order the right to present witnesses to impeach or challenge the assertions made by his accuser at the "full hearing" on issuance of the order?

3. Does Due Process guarantee the defendant in a civil action for an anti-harassment protection order the right to subpoena eyewitnesses to the alleged acts of harassment at the "full hearing" on issuance of the order?

4. Does Washington's anti-harassment renewal statute, RCW 10.14.080(5), which reverses the burden of proof and requires permanent renewal of protection orders absent proof from the defendant that the renewed order is not necessary, violate the Due Process Clause absent a full evidentiary hearing for the underlying order that provides the full panoply of due process rights, including the right to cross-examine one's accusers and to obtain and present witnesses by subpoena?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Luc J. R. Martini, respectfully prays that a writ of certiorari issue to review the decision of the King County Superior Court of Washington State which denied Martini's direct appeal alleging violation of due process when the court of limited jurisdiction made a finding of "unlawful harassment" and issued the civil anti-harassment protection order.

DECISIONS AND OPINION BELOW

Petitioner's direct appeal to the Superior Court was perfunctorily denied as follows: "The court below had substantial evidence before it to reach its conclusion and did not make any errors of law." App. A-1. A commissioner at the initial appellate court, Washington Court of Appeals, Division I, denied Martini's request for discretionary review by order dated October 29, 1999 ("October 29 Order"), App. A-2 through A-8. The October 29 order is the only ruling which purports to analyze the case and state any rationale for denying Martini's due process appeal from the trial court, even though the commissioner ignored important facts and arguments made by Martini. The commissioner's ruling was affirmed by a panel of judges, App. A-9, and was adopted by the Washington Supreme Court Commissioner in his ruling denying review dated April 28, 2000. App. A-10 to A-11. Department 1 of the Washington Supreme Court affirmed its commissioner's ruling by order entered July 11, 2000. App. A-12.

JURISDICTION

This Court's jurisdiction is invoked by 28 U.S.C. § 1257. 28 U.S.C. § 2403(b) may apply. The Attorney General of the State of Washington has been served with a copy of this petition pursuant to Rule 29.4(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment to the United States Constitution provides in pertinent part: "No state shall . . . deprive any person of life, liberty, or property, without due process of law; . . . "

Washington's anti-harassment statute, RCW 10.14.020(1), provides in pertinent part as follows: "Unlawful harassment means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner . . . "

Washington's anti-harassment statute, RCW 10.14.080(2), provides in pertinent part: "An ex parte temporary antiharassment protection order shall be effective for a fixed period not to exceed 14 days . . . a full hearing, as provided in this chapter, shall be set for not later than 14 days from the issuance of the temporary order . . . "

Washington's anti-harassment statute, RCW 10.14.080(3) provides in pertinent part: "At the hearing, if

the court finds by a preponderance of the evidence that unlawful harassment exists, a civil anti-harassment protection order shall issue prohibiting such unlawful harassment."

Washington's anti-harassment statute, RCW 10.14.080(5) provides in pertinent part: " . . . Before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal . . . the court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires. The court may . . . enter a permanent order. . . . "

STATEMENT OF THE CASE

Parties

Petitioner Luc Martini is a man in his 50's with significant health problems who befriended a much younger woman in her early 30's, respondent Virginia Geier-Larbi (Geier), in the early 1990's during the time of his protracted dispute with his employer, a dispute which resulted in employment discrimination claims on which Martini prevailed[1], ultimately at the Washington Supreme Court.[2] The final result of the suit was a $750,000 judgment against his employer and attorney's fees. *Id.* As Martini's case wound its way through the appellate

[1] Miller Dec. (9/20/99), Ex. A.

[2] *Martini v. Boeing*, 137 Wn.2d 357, 971 P.2d 45 (1999).

courts after a trial court victory, his relationship with Geier deteriorated to the point in 1998 where he sought protection from her by filing an anti-harassment petition in the appropriate court of limited jurisdiction in Renton, Washington.[3]

Martini's allegations included that Geier had entered his home and properties without permission and that her continued phone calls and emotional and financial demands on, and deceitful manipulation of Martini were emotionally harassing and harmful to and compromised his health, which was fragile following coronary artery spasms and triple bypass heart surgery in 1998. *Id.* One week later, Geier filed her cross-petition for a protective order against Martini. Miller Dec. (9/20/99), Ex. B. Both petitions were filed under Washington's anti-harassment statute, Chapter 10.14 RCW, a proceeding which occurs by the hundreds each month.[4]

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[3] Tr. 9/21/98 pp. 25-38; Miller Dec. (9/20/99), Ex. A.

[4] Civil anti-harassment protection orders originally were only available in the Washington superior courts, the trial courts of general jurisdiction, because those courts had exclusive jurisdiction of matters in equity. *See State v. Brennan*, 76 Wn. App. 347, 884 P.2d 1343 (1994) (vacating criminal conviction for violation of anti-harassment order under Chapter 10.14 RCW because the underlying protection order had been issued in the state district court). Article 4, § 6 of the Washington Constitution was amended in 1993 to grant local district courts concurrent jurisdiction in equity so they could issue such orders. Laws 1993, H.J.R. No. 4201, approved Nov. 2, 1993.

Recent Washington court statistics show that "full order hearings" on these one-year or longer protection orders are held at the rate of over 9,000 per year pursuant to ch. 10.14 RCW and the identical (and cross-referenced) domestic violence and

Washington's Anti-harassment Statutory Scheme

The stated purpose of the anti-harassment statutes is to provide "speedy and inexpensive" injunctive relief for a petitioner through a temporary order followed by a full hearing. RCW 10.14.010; 10.14.080. App. B. Temporary orders are typically *ex parte*. RCW 10.14.080(2). The statute provides that "a **full hearing**, as provided in this chapter, shall be set not later than 14 days from the issuance of the temporary order . . . " *Id*, emphasis added. The statute does not explicitly define the extent of the "full hearing". It requires proof by a preponderance of the evidence, indicating an adversarial evidentiary hearing is contemplated to determine a disputed issue of fact:

> At the hearing, if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil antiharassment protection order shall issue prohibiting such unlawful harassment.

RCW 10.14.080(3). The order may issue for up to a year under most circumstances. The statute also reverses the burden of proof at a renewal hearing, thus requiring that the "full hearing" factually support the later permanent order. *See* RCW 10.14.080(5).

When the court issues a protection order, RCW 10.14.110 requires the court clerk to immediately forward the order to law enforcement and, further, requires the law enforcement agencies to disseminate the order throughout the state on its computer-based criminal intelligence information system.

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dissolution provisions, RCW 26.09.060(3) and RCW 26.50.060. App. A-19 to A-20.

The statute provides for renewal of the anti-harassment order on the request of a successful petitioner if application is made within three months before expiration of the order, after a hearing. RCW 10.14.080(5). But a recipient of a protection order, such as Ms. Geier, has no burden at the renewal hearing to obtain a permanent order. Rather, the statute **reverses** the burden of proof at the renewal hearing. It requires the court to grant the renewal, which may be permanent, absent sufficient proof by the respondent:

> The court **shall** grant the petition for renewal **unless** the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order . . .

RCW 10.14.080(5) (emphasis added). App. B-4.

Trial Court Proceedings

At the initial hearing in Renton District Court on September 14, 1998, after entry of temporary orders for each party, Martini requested discovery and the issuance of subpoenas to compel testimony of witnesses he believed necessary to prosecute his case and to defend against the cross-petition of Geier. His request was summarily denied by Judge Sierra on the basis the use of discovery and subpoenas of witnesses were "not allowed" at the "full hearing":

> Judge: . . . . It is not a trial however. You mustn't confuse it with a trial.
>
> Geier: Right. Exactly.

> Judge: There is no discovery. Discovery is for a civil trial or a criminal trial. This is neither. . . . This is supposed to be a hearing that is handled in the expeditious manner. Having numerous witnesses will not accomplish that goal, and the court is sure to make sure the goal is accomplished. Alright?

Tr. (9/14/98) p. 21. Judge Sierra was equally explicit that subpoenas were not available to Martini:

> Martini: And there is no way I can compel witnesses to appear?
>
> Judge: This is not that kind of hearing. Not that kind of hearing. You may ask the witnesses to come in. O.K.?

Tr. (9/14/98) p. 30:24-31:2.[5] This ruling was despite the fact such hearings are not exempt from the normal rules of court which provide for discovery, subpoenas, and normal courtroom procedure for a full hearing.[6]

Judge Sierra's categorical position was matched a week later by a second district court judge, Judge Platter, at the "full hearing" held September 21. There Martini renewed his request for subpoenas – some for persons

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[5] Although the statute permits a party to be represented by private counsel, RCW 10.14.090, the refusal to issue subpoenas necessarily discriminates unfairly against pro se litigants because they are not permitted to subpoena witnesses, while an attorney may subpoena witnesses under the rules. *See* CLRJ 45(a).

[6] The relevant Washington Court Rule provisions are CRLJ 26(c), 45, 81(a).

Geier had mentioned in her petition and whom he wanted to call as hostile witnesses for his defense – and discovery from Geier, which was again categorically denied, this time by Judge Platter, as not permitted at this kind of proceeding, showing it was the accepted approach in this court.

> . . . I see no basis to reconsider [Judge Sierra's order denying discovery, subpoenas and excluding witnesses]. The subject matter of an anti-harassment order is generally fairly personal. Unless you have a witness who can testify to some specific act that he or she has observed, that would constitute an act of harassment as defined by the statute it is highly unlikely to be helpful to the court.

Tr. (9/21/98), p. 8. Judge Platter thus categorically excluded subpoenas for Martini to bring witnesses he chose, rejecting any witnesses who might bear on the credibility of his accuser.

Nevertheless, Martini again asked to bring in a potential witness, Mr. Philip Mosely, who did not require a subpoena but was then subject to a non-contact order as to Geier. However, Judge Platter refused to permit the witness without giving a reason, even after hearing Martini's offer of proof:

> Specifically what he would impeach is that Ms. Geier's claim is that I am harassing her. He would impeach that her claims that she has never given me her address, that she has never invited me to her residence or to her church. . . . [7]

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[7] Tr. (9/21/98) p. 9.

When Martini then requested a subpoena for a person seated in the courtroom who could testify as to "some specific act that he . . . had observed that [Geier alleged constituted] an act of harassment," (Judge Platter's phrase for who he would permit to testify), Judge Platter nevertheless denied the request when the witness said he did not want to testify. *See* Tr. (9/21/98), p. 11; p. 23:1-3. The witness was the pastor of Geier's church and an eyewitness to the key event Geier claimed constituted the unlawful harassment: Martini coming to Geier's church during Sunday services.

Judge Platter totally controlled the "full hearing" such that there were only statements by the parties and questioning by the judge. No cross-examination was permitted. Judge Platter explained his procedure for the hearing as follows:

> . . . I'm going to have you tell me what you think is why she should be restrained. Then we will let her explain. I want both of you to respond to what the other said and I will decide both at the same time . . . [8]

Judge Platter added a few moments later: "I do these hearings a lot, and we've already taken more time with this hearing than most. . . . But this doesn't take long for me to hear what people are saying and make a decision." *Id.*, p. 22. Judge Platter made clear these proceedings would be quick and devoid of witnesses other than the parties. There thus was no point for Martini to request

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[8] Tr. (9/21/98) p. 20. Judge Sierra's approach was the same: judicial control and no cross-examination. *See* Tr. (9/14/98) p. 22:22-25:13.

cross-examination given the clarity of this stated procedure, the prior rulings showing the judge would control and restrict the proceeding, and the fact Judge Platter would decide the issue.

After the opening colloquy, then hearing the parties' statements and asking its questions, all in less than 30 minutes, the trial court issued a one-year anti-harassment order on behalf of Geier which contained the finding that Martini had committed "unlawful harassment" against Geier. App. A-14. The order restrained Martini from contact with Geier and excluded him from her residence, her place of employment, and from the Calvary Evangelical Lutheran Church. *Id.*

Martini's Appeals

Martini appealed to the King County Superior Court, a trial court of general jurisdiction which sits in appellate jurisdiction over courts of limited jurisdiction. Still acting *pro se*, Martini argued he was denied due process in the conduct of the hearing and that there was insufficient evidence under the statute. The Superior Court denied Martini's appeal in May 1999. App. A-1. Martini moved for discretionary review before the Court of Appeals, which was heard in October 1999. App. A-2 to A-8.

While the petition for discretionary review to the Court of Appeals was pending, the first anti-harassment order was ready to expire so Geier moved for renewal. Miller Dec. (10/15/99), Ex. N. After Martini filed his brief in the Court of Appeals arguing that the renewal statute's procedure reversing the burden of proof was constitutionally impermissible, and after Geier had also sought to obtain a settlement of the litigation for approximately

$100,000, Geier dropped her petition for renewal prior to the argument at the Court of Appeals in order to argue that the case at the Court of Appeals was then moot and thus preserve the finding of unlawful harassment against Martini. *Id.*, Exs. O-U; App. A-4 to A-5.

Preservation of the adverse finding against Martini permits Geier to bring a later civil action against Martini for damages under collateral estoppel principles since the unlawful harassment and emotional distress have been conclusively established. *See* RCW 10.14.020(1), App. B-2. The only remaining fact to be determined would be the amount of damages. It was clear from the circumstances and arguments to the courts that Geier felt no need of an anti-harassment order when she dropped her renewal petition. Indeed, that procedure revealed her litigation posture was an effort to obtain and preserve the finding of unlawful harassment for use in a later civil case.

The Court of Appeals Commissioner denied discretionary review on the basis the case was moot. The Commissioner also explicitly held that the matter was moot because the State had no interest in the matter which she characterized as an "entirely private" dispute between the litigants. App. A-5. Nevertheless, the Commissioner also explicitly held that any due process rights Martini had were subsidiary to the State's interest in a "speedy and inexpensive method" to obtain anti-harassment orders. App. A-7. Judge Platter explicitly referenced the public's interest in the proceeding. Tr. (9/21/98) p. 18:17-18. The Washington Court of Appeals and Supreme Court both accepted this ruling, demonstrating the Washington courts are not troubled by the perfunctory procedures in this large class of cases and agree that

defendants in such cases have no meaningful due process rights.

Martini appeals because of the initial denial of his due process rights in the trial court and the consequent unfairness of the proceeding. He also appeals because of the exposure to him financially which makes the entire matter not moot since vacation of the protection order and the finding will still grant him meaningful relief. Martini also appeals because this case presents an important issue which rarely gets litigated in the higher appellate courts, but needs to be decided to give guidance on the application of Constitutional principles to these proceedings.

REASONS FOR GRANTING THE WRIT

This case involves denial of basic elements of a fair hearing at the final, "full hearing", not denial of truth-finding procedures at an initial, preliminary or pre-deprivation hearing which may be acceptable if followed promptly by a full evidentiary hearing.[9] A writ of certiorari should be granted for several reasons.

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[9] *See, e.g., Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 545-547, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985): "Our holding [that 'some kind of hearing' is required to make sure there are reasonable grounds for the decision] rests in part on the provisions in Ohio law for a full post-termination hearing"; *Brock v. Roadway Express, Inc.*, 481 U.S. 252, 107 S.Ct. 1740, 95 L.Ed.2d 239 (1987) (evidentiary hearing not required for preliminary reinstatement hearing where prompt post-reinstatement evidentiary hearing is available.)

First the writ should issue because the decision of the Washington courts denying Martini the right to cross-examine his accuser in the final, "full hearing" is in direct conflict with this Court's decisions requiring cross-examination, the most basic truth-finding procedure, in hearings at which a party has a meaningful interest at issue which turns on questions of fact.[10] The same is true for the denial of Martini's right to call or subpoena witnesses on his behalf to challenge the credibility of his accuser or as witnesses to any of the events in question. *Id.*

Second, it should issue because the Washington State decisions are in direct conflict with the decisions of other state courts which have addressed the due process requirements at such hearings. Rule 10(b). *See infra*, Section C.

Third, the writ should issue because this case presents a rare opportunity to address the Constitutional procedural requirements in a common proceeding in Washington (over 9,000 such "full order" protection order hearings per year) but which, because of its nature and the costs involved, rarely get reviewed in the higher appellate courts.

Finally, the writ should issue to determine the minimal Due Process requirements for "full hearings" under Washington's statutory scheme and whether the renewal

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[10] *Goldberg v. Kelly*, 397 U.S. 254, 269, 90 S.Ct. 1011; 25 L.Ed.2d 287 (1970): "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses"; *Morrissey v. Brewer*, 408 U.S. 471, 488-489, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) (final evaluation of contested facts leading to parole revocation requires full hearing including the right to confront and cross-examine adverse witnesses).

provision, which switches the burden of proof on the presumption the procedures at the initial hearing are constitutional.

A. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS REQUIRING THE OPPORTUNITY TO CROSS-EXAMINE WITNESSES AND PRESENT WITNESSES AT A "FULL HEARING" TO WHICH A PERSON IS ENTITLED UNDER THE CONSTITUTION WHEN HE HAS IMPORTANT OR PROTECTED RIGHTS AT STAKE.

Due process requires that the hearing be "appropriate to the nature of the case . . . and whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes place."[11] Thus, it has long been held that the right to a "full hearing" involves the right of the parties to notice, reasonable opportunity to know the claims against oneself and to meet them, and the right to present evidence. *E.g., Morgan v. United States*, 304 U.S. 1, 18-21, 58 S.Ct. 773, 82 L.Ed. 1129 (1938); *Morrissey v. Brewer, supra.* "The hearing, moreover, must be a real one, not a sham or pretense."[12]

The minimum due process requirements for a "full hearing" on protected or important interests which turn on

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[11] *Morrissey v. Brewer, supra*, 408 U.S. at 487-488; *Goldberg v. Kelly, supra*, 397 U.S. at 269. *See Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969); *Mullane v. Central Hanover and Trust Company*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed 865 (1950).

[12] *Palko v. Connecticut*, 302 U.S. 319, 327, 58 S.Ct. 149, 82 L.Ed. 288 (1937), quoted in *Joint Anti-Fascist Refugee Committee, infra*, 341 U.S. at 164.

questions of fact are: (1) timely and adequate notice of hearing; (2) an independent and impartial decision maker; (3) the right to appear personally at the hearing, with or without counsel; (4) the right to confront and cross-examine any adverse witness and present evidence and argument in support of the party's claim or defense; and (5) the right to a decision based on applicable legal rules and evidence adduced at the hearing. *Morrissey; Goldberg.*

The hearing in question here was the "full hearing" which followed a temporary restraining order and was the final adjudication of the disputed fact of whether unlawful harassment occurred; if so, by whom; and whether a protection order should issue. It thus is equivalent to the full hearing described in *Loudermill* that permitted the pre-termination hearing to be summary and brief. It is equivalent to the full parole revocation hearing which followed a preliminary hearing in *Morrissey.* It is, therefore, the full hearing that safeguards the expediency allowed when issuing temporary restraining orders *ex parte.* It is the final hearing in which the petitioner has the burden of proof. Under Washington's statutory scheme, it is the only time a respondent can test the factual allegations against him or her before entry of what amounts to a permanent order and of the conclusive, permanent factual finding of unlawful harassment.

Martini suggests that as the final hearing with entry of findings and imposition of sanctions, and in the statutory context of a court hearing, he is entitled to the full panoply of due process rights. No balancing need be done with Geier's or the State's interests since this is a judicial proceeding in equity. Since the Washington courts

showed they believe Martini has no significant due process rights, he also analyzes this matter under the Court's due process cases.

A person's protected property or liberty interest is safeguarded by due process in a preliminary hearing for initial or a temporary deprivation, including in a dispute between private parties rather than between an individual and a government. The most recent analysis in "private litigation," *Connecticut v. Doeher*, 501 U.S. 1, 111 S.Ct. 2105, 115 L.Ed.2d 1 (1991), used the principles established in *Matthews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). In this context, neither the government nor a government agency is a party or is taking direct action against the person asserting due process rights. Justice White stated the principles which apply:

> Here, the inquiry is similar [to cases involving direct government action] but the focus is different. Prejudgment remedy statutes ordinarily apply to disputes between private parties rather than between an individual and the government. Such enactments are designed to enable one of the parties to "make use of state proceedings with the overt, significant assistance of state officials," and they undoubtedly involve state action "substantial enough to implicate the due process clause." . . . Nonetheless, any burden that increasing procedural safeguards entails primarily affects not the government, but the party seeking control of the other's property. . . . For this type of case, therefore, the relevant inquiry requires, as in *Matthews*, first, consideration of the private interest that will be affected by the prejudgment measure; second, an examination of the risk of erroneous deprivation through the procedures

> under attack and the probable value of additional or alternative safeguards; and third, in contrast to *Matthews*, principal attention to the interests of the party seeking the prejudgment remedy, with, nonetheless, due regard for any ancillary interest the government may have in providing the procedure or foregoing the added burden of providing greater protections.

Connecticut v. Doeher, 501 U.S. at 10-11 (internal citations omitted).

Under the *Doehr* analysis the issue would be 1) what are Martini's private interests at issue; 2) what is the risk of erroneous deprivation of his interest through the procedures used and the probable value of additional safeguards; and 3) what are the interests of the person seeking the order, and of the government, as balanced against the burden of more protective procedures?

Martini's private interests affected by entry of the order are substantial. Entry of the finding is a form of public "branding" with serious civil and criminal ramifications; it is the first step in a comprehensive, interlocking criminal and civil scheme which makes all the future criminal steps flow as a matter of course and difficult to avoid:[13]

* A public record is established that he committed "unlawful harassment" which may be used against him for employment, future anti-harassment proceedings, and future criminal proceedings;

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[13] *See, e.g., State v. Brennan, supra*, re criminal prosecution after entry of the civil protection order.

* Martini's freedom of movement was restricted, including banning him from the local Lutheran Church.

* The finding of "unlawful harassment"is disseminated throughout state law enforcement immediately upon being made;

* Martini is subject to criminal prosecution of a gross misdemeanor for an alleged violation, including immediate arrest on the complaint of Geier, as well as the possibility of a finding of contempt and immediate imprisonment;

* Martini is subject to renewal proceedings for a long term or permanent order where the presumption is reversed and the order is presumed to enter unless he can meet a burden of proof;

* The decision has a *res judicata* or a *collateral estoppel* effect on the finding of unlawful harassment for future civil liability – in this case Martini will be foreclosed from arguing he did not have a full and fair opportunity since he appealed the initial hearing on that basis and that appeal has been rejected to date, giving Geier the argument the issue is *res judicata* as between them.

These consequences are not minor or trifling, the rulings of the two appellate commissioners notwithstanding. A good example of this Court's recognition of the detriment of a wrongful, public "branding" such as Martini contends occurred here is in *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 71 S.Ct. 624, 95 L.Ed. 817 (1951), particularly Justice Frankfurter's detailed concurrence.

In that case the Attorney General furnished a list to the Loyalty Review Board of organizations he determined were communist. The list was made without any formal proceeding or notice to the organizations. Unlike Martini's case where he was designated as one who committed "unlawful harassment", the designation of being a communist organization "impose[d] no legal sanction on these organizations other than it serves as evidence in ridding the Government of persons reasonably suspected of disloyalty," 341 U.S. at 160-161, and in fact "does not directly deprive anyone of liberty or property." *Id.*, 341 U.S. at 164. Nevertheless, a due process right attached. As Justice Frankfurter said so well, and as applies equally to Martini's case here, it would be "blindness" not to recognize the practical effect of Martini's designation and the need for due process safeguards before it is made.

In that politically charged time of the cold war, designation as a communist injured many of the organizations. In our present age the accusation of harassment is also charged. Embedded as it is into a restraining order, into a judicial finding of fact as a final judgment, as part of the public record, and disseminated to all police in the state, it has an undeniable import – a formality and legal effect beyond the designation in *Joint Anti-Fascist Refugee Committee*.

While both the State and Geier have an interest in obtaining the order (though Geier's dismissal of the renewal petition reveals her true, financial interest in getting and keeping the finding of unlawful harassment), nothing in the statute or these circumstances demonstrates hers or the State's interests overcomes the harm to Martini of an erroneous determination, and, thus, fails to

overcome the need to determine the truth. Nothing suggests Geier's or the State's interests merit ignoring the most fundamental procedure for seeking the truth, cross-examination.[14] This is particularly true in these circumstances where the burden of the corrective procedures is so slight: adding perhaps as much as five or ten minutes for cross-examination to a 20-minute hearing.

The same holds as to the minimal burden of permitting subpoenas of witnesses as requested by Martini. It would take but a few minutes to examine the pastor, who was in the courtroom during the hearing, to hear his version of what occurred at the church, or to hear Mr. Mosely testify that Geier had indeed invited Martini to her church and her home, contrary to her allegations.

To preclude cross-examination and reject third party witnesses as is the practice in Washington makes a mockery of the truth-finding that normally characterizes the judicial process and is a hallmark of due process – though it is more efficient. As demonstrated *infra*, other state courts have rejected this faulty procedure, whether "efficient" or not.

Martini, and the thousands in his position in Washington each year, are entitled to the fundamentals of due process for the reasons described by Justice Frankfurter: those basic protections are necessary for all to accept the

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[14] Cross-examination is "beyond any doubt the greatest legal engine ever invented for the discovery of the truth." 5 *Wigmore on Evidence* § 1367, p. 32 (1974). *See Davis v. Alaska*, 415 U.S. 308, 316, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974): cross-examination is the "principal means by which the believability of a witness and the truth of his testimony are to be tested."

fairness of the order and maintain the belief in the ultimate justice of our system of government. *Id.*, 341 U.S. at 161-174. It cannot be denied that such faith in the fairness of our government system is particularly important in proceedings for protection orders because they touch so many of our citizens daily, often laced with emotion and passion. The failure to follow basic due process guarantees means these orders, so important to maintain peace and tranquility on a day-to-day basis, will not be accepted as legitimate and, as a consequence, will serve only to undermine the peace they are meant to insure.

In this case all four levels of Washington courts, without analysis or citation to any precedent, explicitly ruled or acted as though Martini has no fundamental due process rights which were implicated prior to issuance of the anti-harassment order. App. A-5 to A-6. To the extent he had any such rights, they were, according to the appellate court commissioner, overcome by Washington's "strong interest in protecting its citizens from harassment" and the statute's goal "to provide victims with a speedy and inexpensive method of obtaining civil anti-harassment protection orders preventing all unwanted contact between the victim and the perpetrator." *Id.* Since this rush-to-judgment analysis is inconsistent with the application of constitutional principles (as was also the case in *Joint Anti-Fascist Refugee Committee*), it demonstrates the Court needs to authoritatively address due process requirements for this class of proceedings.

B. MARTINI'S RIGHT TO ALL ASPECTS OF DUE PROCESS INCLUDING CROSS-EXAMINATION AND SUBPOENA OF WITNESSES WAS ESTABLISHED BY THE STATE WHEN THE STATUTE SPECIFIED A "FULL HEARING" PRIOR TO ENTRY OF A ONE-YEAR ORDER AND AS A PREDICATE FOR THE RENEWAL ORDER.

Washington's statutory scheme requires that the defendant be given a "full hearing" prior to entry of a one-year order where the petition has the burden of proof by a preponderance of the evidence. A defendant's protected interests are heightened by the statute because it requires dissemination of the protection order, including the finding that the person has committed "unlawful harassment", to law enforcement agencies around the state. RCW 10.14.110. It also provides for criminal prosecution and criminal contempt on violation of the order. RCW 10.14.120. Because the statutory scheme includes the renewal statute which switches the burden of proof for renewal in apparent reliance on the propriety of the first proceeding, the due process interest at the one "full hearing" where the petitioner has the burden of proof is dramatically heightened by the statute.

A person's liberty or property interest may be created by state law.[15] A protected interest exists where, as here, the statute has created both substantive predicates or particularized standards or criteria which guide the discretion of decision makers, and which contain explicit mandatory language such as specific directives to the

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[15] *Hewitt v. Helms*, 459 U.S. 460, 466, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983).

decision makers that if certain predicates are present, a specific result must follow. *Id.*

Washington's declaration that the finding of unlawful harassment cannot be made until after a "full hearing", and then only by a preponderance of the evidence, is a legislative grant to all respondents of a protected interest in having the panoply of due process prior to entry of the finding and issuance of the order, with the other ramifications that brings: the public "branding" of respondents by requiring notice to all police agencies around the state; the potential liability for criminal enforcement; switching of the burden of proof at renewal proceedings for issuance of a longer term or permanent order; the conclusive determination of "unlawful harassment" and its underlying predicate that the complaining party suffered "substantial emotional distress."

The statute provides the basis for issuing the order by defining "unlawful harassment" and further specifying that issuance of the order is mandatory upon making the finding. The requirements stated in *Hewitt v. Helms* are met by the statutory scheme. Thus, contrary to the Washington courts' position, Martini had a protected property interest in the full hearing prior to entry of an order against him minimally on the basis of the promises made in and the structure of the statutory scheme.

Since the State chose to extend the right to a "full hearing" in district or superior court pursuant to normal court procedures before making a finding of "unlawful harassment", and imposed restrictions under penalty of criminal sanctions while also determining liability for a civil damages claim by the protected party, the trial court

may not make and enter that finding absent fundamentally fair procedures to determine whether the "unlawful harassment" actually occurred. *See Goss v. Lopez*, 419 U.S. 565, 574, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975).

C. THE WRIT SHOULD ISSUE BECAUSE WASHINGTON'S REFUSAL TO REQUIRE DUE PROCESS IN ANTI-HARASSMENT PROCEEDINGS IS INCONSISTENT WITH DUE PROCESS REQUIREMENTS APPLIED IN OTHER STATES.

The Writ should also issue because the Washington courts' treatment of anti-harassment cases, particularly the appellate courts' trivializing the importance of his due process rights in a "full hearing", is squarely at odds with the application of federal due process principles to similar proceedings in other states. Those other states which have considered the kind of process which is due in converting a temporary, civil injunction restraining a person from contacting or harassing another to a one year or permanent injunction have all ruled, whether based on statutory language or explicitly relying on due process principles, that a person who contests such an order is entitled to a "full hearing" which means presentation of evidence and argument and the right to cross-examine witnesses.

In *Tyree v. Evans*, 728 A.2d 101 (D.C. App., 1999), a boyfriend appealed a one-year civil protection order entered in favor of his girlfriend. Prior to issuing the order, as occurred to Martini, the trial court stated she would control the hearing and ask questions as she saw fit. The judge thus did not allow the boyfriend's attorney

to cross-examine the girlfriend. The appellate court vacated, holding that although the judge could place reasonable limits on cross-examination, it was error to preclude it entirely. It described the vice of control and questioning by the judge:

> In Professor Wigmore's view, interrogation by the judge is never a satisfactory substitute for cross-examination by the attorney for the opposing party, for the judge has "neither the strong interest nor the full knowledge that are required." . . . Where, as in this case, the judge conducted all of the interrogation, her statement that [the respondent] could suggest questions which the judge might or might not ask did not provide [respondent] with the equivalent of the right to cross-examine [his accuser].

Id., 728 A.2d at 106. The same is true here since Judge Platter controlled the hearing and did not permit Martini to cross-examine Geier. In the type of case which is generally a swearing contest, doing away with cross-examination and keeping out witnesses destroys any fairness that normally is the hallmark of contested judicial hearings.

In Florida the appeals court vacated an injunction entered on behalf of one business partner against the other where the party against whom the injunction was issued had not been permitted to cross-examine the complaining party or call witnesses and thus was denied due process. *Utley v. Baes-Camacho*, 743 So.2d 613 (Fla. App. 5th Dist. 1999). The appellate court ruled, as a matter of law, the trial court could not have accurately determined the facts.

In *Striedel v. Striedel*, 15 S.W. 3rd 163, 166 (Tex. App., Corpus Christi 2000) the Texas appeals court ruled "the opportunity to be heard and present evidence must generally amount to more than a cursory opportunity to cross-examine the other party's witness," then vacated the civil protection order because the trial court had interrupted the husband's attempt to cross-examine the wife prior to completion of the cross-examination or other presentation of evidence. The court found the denial of due process was particularly egregious because issuance of the protective order could have a substantial impact on the husband's liberty in the future.

Similarly, in *Obrist v. Harmon*, 150 Or. App. 173, 945 P.2d 1089 (1997), the trial court issued a restraining order under Oregon's Family Abuse Prevention Act against the father. At the hearing the trial court would not permit the husband to call his eight year old daughter as an eyewitness to an incident in which the mother struck the father. The appeals court held excluding this testimony was error because it was relevant and because the mother did not object to it. This is similar to the situation in Martini's case where he requested the testimony of the pastor who had witnessed the incident in the church which was the heart of Geier's complaint, and who was seated in the courtroom, but the trial court refused to permit Martini to subpoena the pastor who stated he did not wish to testify.

In *Grist v. Grist*, 946 S.W.2d 780 (Mo. Ct. App. 1997), the trial court entered an order of protection under its adult abuse act against the husband and in favor of the wife. At the hearing the trial court conducted all the questioning and precluded any cross-examination, as was also done here. Also as with Martini, the husband in *Grist*

wanted to call two witnesses and to present other evidence, but the court refused to permit him to do so. The appellate court held the summary proceeding failed to constitute a proper adversary hearing. The protection order was vacated because it was necessarily based on insufficient evidence.

The Indiana appeals court vacated a civil protection order where the trial court had refused to hear any evidence from either the step-son or the step-mother regarding allegations in the petition, where the statute, as here, contemplated an evidentiary hearing and required the petitioner to prove the allegations by a preponderance of the evidence. *Maurer v. Maurer*, 712 N.E.2d 990 (Ind. App. 1999). Other state cases are to similar effect.[16]

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[16] *See Semple v. Semple*, 763 So.2d 484 (Fla. App. 4th Dist., 2000) (domestic violence protection order statute contemplated "full hearing", which was also required by due process); *Zuco v. Tucker*, 9 Neb. App. 155, 609 N.W. 2d 59 (2000) (trial court limited testimony and refused to permit ex-husband to call witnesses to testify in his behalf; appellate court rejected "blanket policies" limiting witnesses or procedures in contested proceedings); *Miller v. Leighty*, 158 Or. App. 218, 973 P.2d 920 (1999) (vacating civil protection order when trial court precluded respondent from cross-examining petitioner or presenting evidence in opposition to a permanent civil anti-stalking order); *Miller v. Miller*, 691 So.2d 528 (Fla. App. 4th Dist. 1997) (domestic violence protection order vacated where trial court refused husband's attempt to offer evidence and cross-examine wife, insisting the hearing was "not an evidentiary hearing" but was on the wife's petition for an extension of *ex parte* temporary injunction); *Deacon v. Landers*, 68 Ohio App. 3d 26, 587 N.E.2d 395 (1990) (vacating domestic violence protection order for failure to provide a "full hearing" which requires an opportunity to all parties to present evidence and argument and to cross-examine).

D. THE COURT SHOULD STRIKE THE PORTION OF RCW 10.14.080(5) WHICH SWITCHES THE BURDEN OF PROOF FOR RENEWAL PROCEEDINGS FOR A PERMANENT ORDER.

Under the Washington courts' approach, permanent renewals will issue where respondents never are accorded due process because it is deemed unnecessary in the first hearing, while the burden of proof will be on the respondent in the renewal hearing. Thus, a respondent would have a permanent order entered against him or her without ever having the chance to fully test the validity of the assertions made by cross-examination or the chance to have witnesses subpoenaed or permitted to testify who can establish the lack of credibility of the accusations.

This can be cured even if full due process rights are not deemed to be required in the first hearing. This Court can strike the portion of RCW 10.14.080(5) which switches the burden of proof for renewals, leaving the statute to require a recipient to move the trial court for a renewed order with the implication the recipient of the order bears the burden to establish the basis for issuance of the renewed order.

Martini respectfully suggests this statute must be stricken if full due process rights are not required in the first hearing.

E. ALTERNATIVELY, THE COURT SHOULD GRANT THE WRIT, VACATE THE RULING, AND REMAND.

If this Court chooses not to review the matter, Martini respectfully suggests the Court consider granting the writ and vacating the King County Superior Court's May, 1999 decision and the September 1998 District Court Order because of the failure to afford the basic elements of due process and remand with instructions to the Renton District Court to dismiss the case.

This Court could also grant the writ, vacate the Superior Court decision, and remand to the Superior Court for reconsideration in light of that court's obligation to construe statutes consistent with Constitutional requirements and, specifically, whether the "full hearing" required by RCW 10.14.080(2) includes the right to subpoena and present witnesses and/or to cross-examine adverse witnesses. The Superior Court could also be instructed to consider what minimum procedures are required pursuant to the "full hearing" under RCW 10.14.080(2) and federal due process requirements before a court may enter a finding of "unlawful harassment" as defined under RCW 10.14.020, given the renewal statute.

CONCLUSION

The Due Process Clause applies to private litigation where one of the parties uses the mechanism of the State to place restrictions on the other. Because the anti-harassment renewal statute and the Washington courts' refusal to permit cross-examination or full presentations of a defendant's case when contesting entry of one-year civil anti-harassment protection orders conflict with this Court's due process requirements, because they also conflict with the decisions of other state courts which have addressed similar proceedings, because this Court has not addressed the due process requirements for this large class of cases which touch thousands of people daily, and because accepting this case provides a rare opportunity to address these issues in cases not often appealed, this petition for certiorari should be granted.

Alternatively, certiorari should be granted, the Superior Court's decision vacated, and the matter remanded to the Superior Court for reconsideration of the procedural requirements of a "full hearing" under the statute and consistent with Constitutional requirements; or both the Superior Court and District Court decisions vacated and the matter remanded to the District Court with instructions to dismiss in light of the failure to provide due process in the September, 1998 full hearing on the merits.

DATED this 10th day of October, 2000.

GREGORY M. MILLER
Counsel of Record
Attorney for Petitioner

APPENDIX A

[SEAL] SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

MARTINI
v. Appellant
GEIER
Respondent

NO. 98-2-25439-4 SEA
DECISION ON
RALJ APPEAL
(Filed May 24, 1999)
Clerk's Action Required

This appeal came on regularly for oral argument on May 24, 1999, pursuant to RALJ 8.3, before the undersigned Judge of the above entitled court and after reviewing the record on appeal and considering the written and oral argument of the parties, the court holds the following:

~~Reasoning Regarding Assignment of Error:~~ The court below had substantial evidence before it to reach its conclusion and did not make any errors of law.

IT IS HEREBY ORDERED that the above cause is:

[X] AFFIRMED; [ ] REVERSED; [ ] MODIFIED;

COSTS – Respondent has submitted its declaration today; Appellant is to submit his reply by June 25, 1999.

Dated: 5/24/99

/s/ Nicole MacInness
JUDGE

/s/ L. Martini
Counsel for Appellant – Pro Se

/s/ Kenneth G. Christensen #13454.
Counsel for Respondent

DECISION OF RALJ APPEAL (DCRA)
RALJ TITLE 9

SC FORM JO-129 (8/83)

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON DIVISION ONE

LUC J. R. MARTINI, Petitioner, v. VIRGINIA GEIER LARBI and OKHTAR LARBI, Respondents.	No. 44845-5-1 COMMISSIONER'S RULING DENYING DISCRETIONARY REVIEW (Filed Oct. 29, 1999)

Luc Martini seeks review of the superior court decision on RALJ appeal affirming an antiharassment order entered in Renton District Court. Martini argues that the district court hearing did not comport with due process and the superior court erred in refusing to supplement the record. He also argues that the evidence before the district court failed to support the antiharassment order. The antiharassment order has now expired and this case is therefore moot. The facts of the case do not render this case appropriate for addressing the issues that Martini wants this court to review. The motion for discretionary review is denied.

FACTS

Luc Martini and Virginia Geier were friends for several years. Their friendship began to fall apart after Geier began dating and then married Mokhtar Larbi, who is Muslim. Martini readily admitted that he was prejudiced against Muslims. The situation culminated when Martini

telephoned Geier for assistance one day. Larbi answered the telephone and told Martini not to call or contact Geier again. Martini paged Geier, but she did not return his page. The next day, Martini went to Geier's church, something he had never done before. Geier was alarmed by Martini's presence.

Shortly thereafter, Martini filed a petition asking for an antiharassment restraining order against Geier and Larbi. Geier responded by filing her own petition against Martini on behalf of herself and her son Martin. The petitions were joined for hearing.

At an initial hearing, the judge denied Martini's request for discovery, interrogatories and subpoenas.

At the subsequent hearing on the merits, Martini asked the court to reconsider his discovery and subpoena requests. The court denied the motion, noting the subject matter is fairly personal and that unless a witness had observed a specific act, the testimony would not be helpful to the court. The court specifically found that Philip Mosely's proposed testimony would not be admissible.

After hearing extensive testimony from Martini and Geier, the court found that Martini had failed to demonstrate any way in which Geier was harassing him. On the other hand, the court found that Geier's petition was well-taken.

> All right. Here' my decision. I am finding that there have been repetitive acts or attempts to contact culminating in the incident at church on the part of Mr. Martini with respect to Ms. Geier. That those acts have arisen out of a

> friendship and they have become, since her marriage, offensive and frightening to her. In short, based on everything I've heard, and most of it, frankly, Mr. Martini, I have taken from you – It appears to me that there is indeed a situation that falls under the statute. . . . I am going to restrain you for one year from having any contact whatsoever with Ms. Geier.

Martini appealed to the superior court, which affirmed. The court struck a supplemental brief, amended opening brief, and supporting materials filed by Martini.

He now seeks review.

DECISION

The restraining order in this case expired September 21, 1999. Geier withdrew her motion to make the order permanent. This case is thus moot. Martini, nonetheless, asks this court to accept review.

He first contends that the case cannot be moot unless the order is vacated. He analogizes the order to a criminal conviction and argues it will have future consequences. He contends that the findings can be used in future civil litigation in this case and may be used to impeach him on other court proceedings. His arguments are not persuasive. The court did not make any particular factual findings that might be used against Martini. This is not the equivalent of a criminal conviction and it is not at all clear that the order could be used for general impeachment purposes.

Martini also argues that the case raises issues of public importance that should be addressed by this court.

The decision as to whether a case raises issues of continuing and substantial public interest is governed by three main factors: "(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance for public officers; and (3) whether the issue is likely to recur."[1] Additionally, this court should consider the level of genuine adverseness and the quality of advocacy addressing the issues.[2]

The dispute in this case is entirely private. Contrary to Martini's argument, his own testimony provided ample basis for an antiharassment order. Martini admitted making harassing and unpleasant, possibly threatening, telephone calls. He admitted that he had never been to Geier's church until the incident discussed at the hearing. That Martini was angry and disappointed with Geier is clear from the record. But it is also clear that, despite his repeated protestations that he did not want contact with Geier, that he was unwilling to withdraw and leave her alone. Under the circumstances, the antiharassment order was entirely appropriate.

Nor do Martini's procedural and due process arguments warrant review. Washington has a strong interest in protecting its citizens from harassment.[3] The antiharassment statute is designed to protect those victims to

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[1] *Hart v. Social and Health Services*, 111 Wn.2d 445, 448, 759 P.2d 1206 (1988).

[2] *Hart*, 111 Wn.2d at 448.

[3] *Burchell v. Thibault*, 74 Wn. App. 517, 520, 874 P.2d 196 (1994).

whom objectionable behavior is directed.[4] The statute is intended "to provide victims with a speedy and inexpensive method of obtaining civil antiharassment protection orders preventing all further unwanted contact between the victim and the perpetrator."[5]

The judge entered the antiharassment order after fully hearing the sworn testimony of each party. Each was permitted to comment and/or rebut the testimony of the other. The judge carefully questioned the parties, working diligently to get at the heart of the relevant evidence the party had to offer. Neither party requested cross examination and it is difficult to see what it would have added here.

The court denied Martini's request for subpoenas, interrogatories and discovery. Martini failed to identify a single relevant witness, inquiry, or piece of evidence that would have assisted the trier of fact in resolving the issues before the court. Martini's offer of proof regarding Philip Mosely demonstrated that the witness had nothing pertinent to offer. The court properly rejected Martini's attempt to bring in, ostensibly for impeachment purposes, evidence of domestic violence and mental status proceedings in an eleven-year-old case involving Geier. He has made no attempt to demonstrate that such evidence would be permitted in any proceeding.

Martini also argues that this court should review the superior and district court procedures for supplementing

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[4] *Burchell*, 74 Wn. App. at 522.

[5] RCW 10.14.010.

the record while the case. Martini attempted to demonstrate that Geier committed perjury during the hearing by claiming that she had decided against separating from her husband. The issue does not require review in this case. Additionally, the superior court has authority to enter such orders as it deems necessary for a fair review, including authorizing the district court to act in a particular case.[6] But what Martini wanted added to or included in the superior court appeal was basically irrelevant.

Martini also argues that the procedure for including a rejected district court exhibit in the record needs clarifying. But the same procedure applies in district court as in superior court. It was Martini's obligation to make a sufficient offer of proof on the record and/or to request the district court judge to file the rejected exhibit with the record. Martini's description of his proferred exhibits on the district court record was sufficient to demonstrate that the exhibits were properly rejected.

This case is not otherwise suitable for review. The issues that Martini wishes to present are not well grounded in the rather simple facts of this case. Although the parties are genuinely adverse, the quality of advocacy does not favor review. Geier has no interest in prolonging this litigation and financing appellate briefing and argument in this case. Martini's relentless briefing and rebriefing of issues, relying heavily upon factual allegations, do not lend themselves to orderly appellate review.

Accordingly, the motion for discretionary review is denied.

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[6] RALJ 4.1(a), (b).

Now, therefore, it is hereby

ORDERED that the motion for discretionary review is denied.

Done this 29th day of October, 1999.

/s/ Julie A. Kesler
Court Commissioner

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

LUC J.R. MARTINI, Petitioner, v. VIRGINIA GEIER-LARBI & MOKHTAR LARBI, Respondents.	No. 44845-5-I ORDER DENYING MOTION TO MODIFY (Filed Feb. 4, 2000)

Petitioner has moved to modify the commissioner's ruling denying discretionary review. We have considered the motion under RAP 17.7 and have determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion to modify is denied.

Done this 4th day of February, 2000.

/s/ Baker, J.

/s/ Grosse, J. /s/ Cox, J.

THE SUPREME COURT OF WASHINGTON

LUC J.R. MARTINI, Petitioner, v. VIRGINIA GEIER-LARBI and MOKHTAR LARBI, Respondents.	NO. 69403-6 RULING DENYING REVIEW (Filed Apr. 28, 2000)

Luc Martini and Virginia Geier-Larbi each petitioned for an anti-harassment restraining order against the other. The King County District Court granted Ms. Geier-Larbi's petition but denied Mr. Martini's. Mr. Martini appealed to the King County Superior Court, which affirmed, Mr. Martini then moved for discretionary review in the Court of Appeals. Before that motion was heard, however, the restraining order expired. Commissioner Kesler declined to accept review of the moot case. A panel of judges denied a motion to modify the Commissioner's ruling. Mr. Martini now moves for discretionary review by this court.

I fully concur with Commissioner Kesler's detailed explanation why review is not warranted given that the case has become moot. I would add only that if there is some attempt to collaterally use the anti-harassment order against Mr. Martini in some future proceeding, he may challenge the propriety of that use at that time.

There is no basis for discretionary review under RAP 13.5(b). The motion for discretionary review is accordingly denied.

/s/ Geoffrey Crooks
COMMISSIONER

April 28, 2000

THE SUPREME COURT OF WASHINGTON

LUC J.R. MARTINI, Petitioner, v. VIRGINIA GEIER-LARBI and MOKHTAR LARBI, Respondents.	**ORDER** No. 69403-6 C/A No. 44845-5-I (Filed July 11, 2000)

Department I of the Court considered this matter at its July 11, 2000, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That Petitioner's Motion for Extension of Time to File Motion to Modify Commissioner's Ruling is granted and the Motion to Modify Commissioner's Ruling is denied on the merits.

DATED at Olympia, Washington this 11th day of July, 2000.

/s/ Richard P. Guy
CHIEF JUSTICE

KING COUNTY DISTRICT COURT
RENTON DIVISION

Certification – State of Washington, County of King

The undersigned, duly authorized clerk of the King County District Court, Washington hereby certifies that the document on which this stamp is imprinted is a true and correct copy of the original filed in this Court.

Signed this 21st day of September 1998

_____

court clerk

Geier, Virginia dob; 7/2/63

Petitioner

vs.

Martini, Luc

Respondent

NO. DVHR149-98

ORDER FOR PROTECTION FROM UNLAWFUL CIVIL HARASSMENT (ORAH)

(Clerk's action required)

WARNING TO THE RESPONDENT: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 10.14 RCW and RCW 10.31.100 *and will subject a violator to arrest.* Willful disobedience of the terms of this order may also be contempt of court and subject you to penalties under chapter 7.21 RCW.

1. Notice of this hearing was served on the respondent by [X] personal [ ] service by publication pursuant to court order [ ] other _____

2. Minors addressed in this Order: _____

Based upon the petition, testimony, and case record, the court finds that the respondent committed unlawful harassment, as defined in RCW 10.14.080, and was not acting pursuant to any statutory authority, and **IT IS THEREFORE ORDERED THAT:**

[X] Respondent is RESTRAINED from coming hear [sic] and from having any contact whatsoever, in person or through others, by phone, mail or any means, directly or indirectly, except for mailing of court documents, with petitioner the minors named in paragraph 2 above these minors only:
Martin Geier

[X] Respondent is RESTRAINED from making any attempts to contact petitioner and any minors named in paragraph 2 above.

[X] Respondent is RESTRAINED from entering or being within 500 yards (distance) of petitioner's [X] residence [X] place of employment
confidential
[ ] school or daycare [ ] minors named in paragraph 2 above [ ] these minors only:

[X] other: Calvary Evangelical Luthe n Church
16231 N/E 6th St. Bellevue

At present petitioner's address is [X] confidential [ ] the following:

Other:

IT IS FURTHER ORDERED that the Clerk of Court shall forward a copy of this order on or before the next judicial day to:

[ ] _____ County Sheriff's Office

[X] Renton Police Department

WHERE PETITIONER LIVES which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

[ ] The Clerk of Court shall also forward a copy of this order on or before the next judicial day to:

[ ] _____ County Sheriff's Office
[ ] _____ Police Department

WHERE RESPONDENT LIVES which shall personally serve the respondent with a copy of this order and shall promptly complete and return to this court proof of service.

OR [ ] Petitioner has made private arrangements for service of this order.

OR [X] Respondent appeared; further service is not required.

THIS ANTIHARASSMENT ORDER EXPIRES ON September 21, 1999. If the duration of this order exceeds one year, the court finds that respondent is likely to resume unlawful harassment of the petitioner when the order expires.

DATED 9-21-98 at 12:03 AM/PM

I acknowledge receipt of a copy of this Order:

/s/ Virginia M. Geier 9/21/98
Petitioner Date

/s/ Anthony Platter
JUDGE/~~COURT COMMISSIONER~~ pro tem

I acknowledge receipt of a copy of this Order:

/s/ J.L. Martini 9/21/98
Respondent Date

[LOGO]

1999 Caseloads for the Courts of Washington

A Letter From The Administrator

Welcome to our on-line publication of the ***Caseloads of the Courts of Washington***. Statistical data contained in the state's Judicial Information System has been used to publish this comprehensive description of Washington's courts.

From the *Caseload Directory* page you can access most-recent-month, year-to-date, and annual statistics for every superior court and most of the district and municipal courts in Washington State. Annual statistics are also available for the Supreme Court and Court of Appeals. Available statistics include: number of filings by type of case, number of proceedings by type of proceeding, number of dispositions by type of disposition, and many more. Five-year historic summaries are also shown, as are workload indicators. There is also a glossary of terms and an index of tables.

From here you may proceed to the *Caseload Directory*, or to the *Help* page to learn more about viewing and printing caseload data. The *Information* page will give you a description of the Washington State Court System, and explain how caseload data is collected and presented. You may also return to the *Washington State Courts Home Page*.

We hope this on-line publication provides you with useful information. We also look forward to improving this publication in the future. If you have any questions or comments concerning the ***Caseloads of the Courts of Washington***, call the OAC Research Unit at (360)

753-3365, or use the email address given on the *Information* or *Help* page.

/s/ Mary McQueen
Mary McQueen, Administrator

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Courts of Limited Jurisdiction 1999 Annual Caseload Report

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Statewide	Petitions Filed[1]	Domestic Viole ---------Proceed Ex Parte
District Courts		
.State/County	1,104	803
.Municipal	1	1
Municipal Courts	28	9
State Total	1,133	813

[Co

The Courts of Limited Jurisdiction
Violence/Antiharassment Protective Orders, March, 2000

ceedings--------	---------- Petitions Disposed ----------				
e	Full Order	Granted	Dismissed	Transfer Superior	Total Disposed	Revenue[2]
	884	487	0	66	553	0
	0	0	0	0	0	0
	14	9	0	0	9	0
	898	496	0	66	562	0

[County/Court Listings Omitted In Printing]

The Courts of Limited Jurisdiction
Domestic Violence/Antiharassment Activity[1], 1995-1999

	1995	1996	% Chg	1997	% Chg	1998	% Chg	1999	% Chg
FILINGS	13,582	13,470	-0.8%	13,945	3.5%	12,680	-9.1%	12,689	0.1%
PROCEEDINGS									
Ex Parte Hearings	10,289	9,440	-8.3%	11,146	18.1%	9,719	-12.8%	9,485	-2.4%
Full Order Hearings	9,080	9,152	0.8%	9,910	8.3%	9,396	-5.2%	9,708	3.34%
Total Hearings	19,369	18,592	-4.0%	21,056	13.3%	19,115	-9.2%	19,193	0.4%
DISPOSITIONS									
Full Orders Granted	5,862	5,806	-1.0%	6,458	11.2%	6,843	6.0%	6,343	-7.3%
Denied/Dismissed	4,064	4,044	-0.5%	4,845	19.6%	4,524	-6.6%	3,118	-31.1%
Transferred To Superior Court	1,700	1,428	-16.0%	1,364	-4.5%	1,067	-21.8%	906	-15.1%
Total Dispositions	11,626	11,276	-3.0%	12,667	12.3%	12,434	-1.8%	10,367	-16.6%
Revenue[2]	62,179	32,730	-47.4%	17,466	-46.6%	2,255	-67.1%	21,152	838.0%

[1] Does not include related criminal charges, which are included in non-traffic misdemeanors.

[2] Revenue includes only collections for domestic violence petitions. Antiharassment revenue is included in civil revenue.

http://www.courts.wa.gov/caseload/clj/mon/rpt10a.shtml

APPENDIX B

WESTS REVISED CODE OF
WASHINGTON ANNOTATED
TITLE 10. CRIMINAL PROCEDURE
CHAPTER 10.14. HARASSMENT

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Current through End of 1999 First Special Session.

10.14.010. Legislative finding, intent

The legislature finds that serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim is increasing. The legislature further finds that the prevention of such harassment is an important governmental objective. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil antiharassment protection orders preventing all further unwanted contact between the victim and the perpetrator.

Enacted by Laws 1987, ch. 280, § 1.

10.14.020. Definition

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) Unlawful harassment" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct is contact by a person over age eighteen that would cause a reasonable parent to fear for the well-being of their child.

(2) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication. Constitutionally protected activity is not included within the meaning of "course of conduct."

[1999 c 27 § 4; 1995 c 127 § 1; 1987 c 280 § 2.]

10.14.080. Antiharassment protection orders – Ex parte temporary – Hearing – Longerterm, renewal

(1) Upon filing a petition for a civil antiharassment protection order under this chapter, the petitioner may obtain an ex parte temporary antiharassment protection order. An ex parte temporary antiharassment protection order may be granted with or without notice upon the filing of an affidavit which, to the satisfaction of the court, shows reasonable proof of unlawful harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary antiharassment protection order is not granted.

(2) An ex parte temporary antiharassment protection order shall be effective for a fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication under RCW 10.14.085. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication is permitted. Except as provided in RCW 10.14.070 and 10.14.085, the respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

(3) At the hearing, if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil antiharassment protection order shall issue prohibiting such unlawful harassment.

(4) An order issued under this chapter shall be effective for not more than one year unless the court finds

(RCW 10.14.080 - Cont'd)

that the respondent is likely to resume unlawful harassment of the petitioner when the order expires. If so, the court may enter an order for a fixed time exceeding one year or may enter a permanent antiharassment protection order. The court shall not enter an order that is effective for more than one year if the order restrains the respondent from contacting the respondent's minor children. This limitation is not applicable to civil antiharassment protection orders issued under chapter 26.09, 26.10, or 26.26 RCW. If the petitioner seeks relief for a period longer than one year on behalf of the respondent's minor children, the court shall advise the petitioner that the petitioner may apply for renewal of the order as provided in this chapter or if appropriate may seek relief pursuant to chapter 26.09 or 26.10 RCW.

(5) At any time within the three months before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court permits service by publication, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the

(RCW 10.14.080 - Cont'd)

order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in this section. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in subsection (4) of this section.

(6) The court, in granting an ex parte temporary antiharassment protection order or a civil antiharassment protection order, shall have broad discretion to grant such relief as the court deems proper, including an order:

(a) Restraining the respondent from making any attempts to contact the petitioner;

(b) Restraining the respondent from making any attempts to keep the petitioner under surveillance;

(c) Requiring the respondent to stay a stated distance from the petitioner's residence and workplace; and

(d) Considering the provisions of RCW 9.41.800.

(7) A petitioner may not obtain an ex parte temporary antiharassment protection order against a respondent if the petitioner has previously obtained two such ex parte orders against the same respondent but has failed to obtain the issuance of a civil antiharassment protection order unless good cause for such failure can be shown.

(RCW 10.14.080 – Cont'd)

(8) The court order shall specify the date an order issued pursuant to subsections (4) and (5) of this section expires if any. The court order shall also state whether the court issued the protection order following personal service or service by publication and whether the court has approved service by publication of an order issued under this section.

[1995 c 246 § 36; 1994 sp.s. c 7 § 448; 1992 c 143; 1987 c 280 § 8]

10.14.120. Disobedience of order – Penalties

Any willful disobedience by the respondent of any temporary antiharassment protection order or civil antiharassment protection order issed under this chapter subjects the respondent to criminal penalties under this chapter. Any respondent who willfully disobeys the terms of any order issued under this chapter may also, in the court's discretion, be found in contempt of court and subject to penalties under chapter 7.21 RCW.

Enacted by Laws 1987, ch. 280, § 12. Amended by Laws 1989, ch. 373, § 14.

10.14.170. Criminal penalty

Any respondent who wilfully disobeys any civil anti-harassment protection order issued pursuant to this chapter shall be guilty of a gross misdemeanor.

Enacted by Laws 1987, ch. 280, § 17.

Supreme Court, U.S.
FILED
NOV 30 2000
CLERK

(2)

No. 00-559

In The

Supreme Court of the United States

LUC J. R. MARTINI,

Petitioner,

v.

VIRGINIA M. GEIER,

Respondent.

On Petition For Writ Of Certiorari To The King County Superior Court Of The State Of Washington

SUPPLEMENTAL BRIEF

GREGORY M. MILLER
Counsel of Record
220 College Club Bldg.
505 Madison Street
Seattle, WA 98104
(206) 343-4540

Attorney for Petitioner

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OR CALL COLLECT (402) 342-2831

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APPENDIX A

Petition For An Order For Protection (Unlawful Harassment), filed July 28, 2000 ..... A-1

Transcript of *Robbins v. Biedel* hearing (8/11/00) A-4

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INTRODUCTION

Petitioner, Luc J. R. Martini, submits this supplemental brief pursuant to Rule 15.7 to provide information relevant to his Petition for Certiorari which was brought to his attention after the Petition was filed.

THE DUE PROCESS VIOLATIONS RAISED BY MARTINI ARE TYPICAL OF HOW WASHINGTON COURTS OF LIMITED JURISDICTION CONDUCT ANTI-HARASSMENT HEARINGS

Mr. Martini's counsel was contacted after filing the Petition by the Washington ACLU regarding an anti-harassment hearing and order in Washington State's Jefferson County District Court in August, 2000, because the Jefferson County judge's conduct of the proceeding and resulting denial of due process was virtually identical to that of the two King County District Court judges in Mr. Martini's case.[1] These materials and the case were not known to Mr. Martini or counsel prior to filing the Petition. They demonstrate that the problems identified by Mr. Martini are not isolated to his case but persist today in one of the most common proceedings in Washington's courts of limited jurisdiction.[2] Although the

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[1] *Robbins v. Biedel*, No. 8081 (Jeff. Ct'y. D. Ct., Aug. 11, 2000). The petition, hearing transcript, order, and transmittal letter from trial counsel are attached as Appendix A., pp. 1-13.

[2] Counsel is informed by Mr. Biedel's trial counsel that the case is being appealed to the superior court pursuant to Washington court rules, with argument tentatively scheduled for January, 2001. If that appeal is successful it would not make Mr. Martini's Petition moot since it would be at best an unpublished decision of a Washington trial court with no

other state appellate courts which have addressed similar statutes have required their inferior courts to conform such proceedings to Constitutional due process requirements, *see* Petition, pp. 24-27, the majority of states have not addressed the issue. There is no reason to believe similar proceedings in other states which, like Washington, are without appellate rulings, are any more consistent with Constitutional requirements than are the Washington lower courts. Judicial economy – and protection of constitutional rights for multitudes of people daily – is served by addressing this issue now for Washington and for all other states which do not have appellate decisions on the subject.

An anti-harassment cause of action was brought against Mr. James Biedel by Ms. Sally Robbins in Jefferson County District Court in Port Townsend, Washington with a hearing on August 11, 2000, before Judge Lawrence Wilson. Ms. Robbins alleged conclusions only: that Mr. Biedel "verbally abused" her when she chaired a public meeting of the Port Townsend Police Advisory Committee on a noise ordinance, and then later "verbally harassed" her in a second incident in a local store. App.

---

binding authority on any other court. It would not provide any basis for Mr. Martini to return to King County District Court to seek vacation of the September, 1998 protection order and the finding of unlawful harassment which is the specific and material relief he seeks given the threat of civil litigation against him for claimed unlawful harassment. *See* Petition, pp. 11-12; *Burchell v. Thibault, infra.* Just as important for Mr. Martini is that winning that appeal would not provide the authoritative guidance to all Washington courts (or other state courts) on the minimum Constitutional requirements of due process for such anti-harassment protection order hearings.

A-3. No specific facts were stated. *Id.* Mr. Biedel was not permitted to present any evidence contrary to the petition or on his own behalf. App. A-5 to A-8.

As in Mr. Martini's case, a one-year protection order was entered against Mr. Biedel based on the finding that he had committed "unlawful harassment" (App. A-9), the finding required by the statute, RCW 10.14.080(3). Entry of this order provides the basis for a permanent order to be entered within a year on request of Ms. Robbins because the statute switches the burden of proof to require Mr. Biedel prove at a later hearing that the order should not enter: "The court **shall** grant the petition for renewal **unless** the respondent proves by a preponderance of the evidence that the respondent will not resume harassment to the petitioner when the order expires." RCW 10.14.080(5). (Emphasis added).

The *Robbins v. Biedel* transcript demonstrates that the complaint Mr. Martini makes about how two different judges in the King County District Court in Renton, Washington conducted his anti-harassment proceedings by categorically denying him due process in September 1998 is virtually identical to how anti-harassment hearings are typically conducted by the courts in Jefferson County now: as perfunctory, judge-controlled and directed proceedings where protection orders are handed out on request. *See* App. A-4 to A-8; A-13.[3]

---

[3] Mr. Biedel's trial counsel describes current practice in Jefferson County:

> Here in Jefferson County, [under] this statutory scheme, . . . Routinely, any person who does not wish to be contacted, or even talked to, by another person,

The *Robbins v. Biedel* transcript shows Judge Wilson did not pretend to have or permit a true fact finding or contested hearing with the right to call witnesses, present evidence, and argue on one's own behalf, as was also the case in Mr. Martini's hearing. Judge Wilson stated "This is not a fact-finding hearing. That's not the purpose here," App. A-5, even though he then entered an order making a finding of unlawful harassment. Rather, he stated "the issue for the court is whether the order should enter, and whether it should enter for a period of up to one year . . . " *Id.*

When Mr. Biedel argued that the order was improper in part because Ms. Robbins is a member of city government as chair of the Port Townsend Police Advisory Committee, so that he is allowed to address her in her role as a public official while exercising his free speech rights, Judge Wilson stated, "Well that's an issue that you'll have to raise elsewhere." App. A-6. He then signed the order forbidding any contact. App. A-10.

Finally, in response to Mr. Biedel's defense that "the petition is malicious, the statements are false and I have evidence to show that it is true, that the complaint is not accurate," Judge Wilson stated:

> Well that is an issue for trial Mr. Biedel. That's something you'll have to arrange. I would suggest you discuss that issue with your attorney. That would be a separate civil proceeding. It's

---

can rush into court and obtain an Order essentially banishing someone from coming near them.

> the purpose of the court here to simply see that you two are kept separate and apart and that you have no reason to communicate with each other or be in contact with each other. The clerk will see that you get a copy of the order, and discuss those other issues with your attorney.[4]

The heart of the respondent's resistance to the anti-harassment order in *Robbins v. Biedel* was the same as Mr. Martini's: there was no, or insufficient evidence to support finding Mr. Biedel committed unlawful harassment which would satisfy the statutory requirement of a course of illegal conduct (RCW 10.14.020) and he had evidence he wished to present to contradict the assertions in the petition which was the basis for the finding. But Judge Wilson refused to hear any evidence. He simply accepted the petition without scrutiny. He only asked the respondent, Mr. Biedel, if there was any reason he needed to contact Ms. Robbins, then ignored the reason Mr. Biedel gave when making the order.

The circumstances in *Robbins v. Biedel* are particularly mischievous because Robbins was acting as a public official at the time the first of the two alleged acts of harassment occurred. Some of Mr. Biedel's statements which were a necessary part of a "course of conduct" of the alleged harassment, since there were only two events alleged,[5] occurred at a public hearing at which Ms.

---

[4] App. A-7 to A-8

[5] The statute requires a course of conduct which is "a pattern of conduct composed of a series of incidents over a period of time" that necessarily is more than a single incident. RCW 10.14.020(2). *See Burchell v. Thibault*, 74 Wn. App. 517, 521-22, 874 P.2d 196, 199 (1994). Interestingly, at the time of

Robbins was presiding – a setting in which Mr. Biedel has protected First Amendment speech rights which may not lightly be infringed, as the statute itself explicitly recognizes: "Constitutionally protected activity is not included within the meaning of 'course of conduct.' " RCW 10.14.020(2). All this was ignored by the trial court in its denial of Mr. Biedel's due process right to present evidence and argument in his behalf, similar to how the King County judges ignored Mr. Martini's efforts to present evidence on his behalf and contrary to the petitioner.

Martini's position that Constitutional due process is required for respondents in anti-harassment hearings under Washington's statutory scheme is a position which does not have "institutional" support in the same sense that criminal defendants have an organized criminal defense bar or public defender organizations which have institutional reasons and resources to pursue an important issue to the higher appellate courts for proper

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Burchell v. Thibault when superior courts conducted these proceedings prior to the expansion of the jurisdiction of the courts of limited jurisdiction to hear these matters, *see* Petition, p. 4, n. 4, there did not seem to be the same problem in obtaining due process and a true hearing as exists today when these matters are heard in huge numbers in the courts of limited jurisdiction.

An underlying issue thus may be whether Constitutional principles of due process apply **and will be enforced** in courts of limited jurisdiction when parties appear *pro se*, as is the norm in these courts where the vast majority of our citizens' contact with the courts occurs. Will due process be required even in cases like these where the respondent is in a currently politically unpopular position, i.e., an alleged harasser, so there can be an accurate determination of whether the allegation is true?

adjudication, despite the high costs and typical lack of resources of the particular party. Rather, these cases are technically between private parties and the losing party proceeds through the appellate process to the superior courts and then to the appellate courts only on their own funding, which in most cases is very limited and will not support appeals to the higher appellate courts. This helps explain the scarcity of reported appellate court decisions in Washington and elsewhere and why this Court should take this opportunity to address the issue for Washington and those many other states which have not addressed it.

CONCLUSION

Mr. Martini respectfully submits this additional information from Jefferson County, Washington, which demonstrates the concerns raised by him are all too typical of the conduct of anti-harassment hearings by courts of limited jurisdiction in Washington State, particularly where the parties are *pro se*, and that respondents in such proceedings are regularly denied their Federal Constitutional due process rights. The materials demonstrate the present need for this Court to establish clear rules consistent with the Constitution for such hearings, whether held in Washington State or elsewhere. There is a problem. It should be fixed.

DATED this 30th day of November, 2000.

GREGORY M. MILLER
Counsel of Record
Attorney for Petitioner

COURT OF WASHINGTON

FOR Jefferson County District Court

Sally A. Robbins	)	No: 8081
Petitioner	)	**PETITION FOR AN ORDER FOR PROTECTION (UNLAWFUL HARASSMENT) (PTORAH)**
vs.	)	
Jim Biedel	)	
Respondent	)	**(Filed July 28, 2000)**

1. I am petitioning for an Order for Protection against Unlawful Harassment.

* * *

4. Identification of the Petitioner:
   Name: Sally A. Robbins
   Date of Birth: 9-17-30
   Driver's License or Identicard (# and State): Robb/SA 7050P WA
5. Identification of Respondent:
   Name: Jim Biedel
   Date of Birth: 12-22-53
   Driver's License or Identicard (# and State) or, if unavailable, home address: BIEDEJW47OEZ

* * *

REQUEST FOR TEMPORARY ORDER: AN EMERGENCY EXISTS as described in the statement below. I need a temporary restraining order issued immediately without notice to the respondent until a hearing to avoid great or irreparable harm. I reqeust a Temporary Order for Protection that will:

I REQUEST AN ORDER FOR PROTECTION following a hearing **THAT WILL:**

RESTRAIN respondent from making any attempts to keep under surveillance, [✓] me [ ] the minors named in paragraph 6 above.

RESTRAIN respondent from making any attempts to contact, except for mailing of court documents, [✓] me [ ] the minors named in paragraph 6 above.

EXCLUDE respondent from any place I may reside. This address at present is [ ] confidential [✓] the following: 238 Rose Street Port Townsend

RESTRAIN respondent from entering or being within 100 ft (distance) of my [✓] residence [ ] workplace [ ] other:

OTHER:

REMAIN EFFECTIVE longer than one year because respondent is likely to resume acts of unlawful harassment against me if the order expires in a year.

Unlawful harassment means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses, or is detrimental to such person and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress and shall actually cause substantial emotional distress to the petitioner or when the course of conduct is contact by a person 18 years of age or over that would cause a reasonable parent to fear for the well-being of their child. Course of conduct means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course

of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication. Constitutionally protected activities are not included within the meaning of "course of conduct."

STATEMENT: The respondent has committed acts of unlawful harassment as follows. (Describe *specific acts* of harassment and their *approximate dates*, beginning with the *most recent act*. You may want to include police responses.)

I was chair of the Port Townsend Police Advisory & Facilitated a public forum on 3-21-00 about a noise ordinance. Jim Biedel verbally abused me during the 2 hour meeting. I am afraid of him. On July 27, at Penny Saver, he verbally harassed me in front of 2 store clerks.

(continue on separate page if necessary)

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED /s/ Sally A. Robbins at Jefferson Co., Washington.
7/28/00

/s/ Sally A. Robbins

[ ] My residential address is confidential. Direct legal service by mail to: _____

Hearing transcript of Robbins vs. Biedel
August 11th, 2000 Judge Lawrence Wilson Pro-Tem

Judge Wilson: I call the matter of Robbins Vs. Biedel. Will those parties please step forward to the front counter where the microphones are. (pause) Am I pronouncing that correctly?

Ms. Robbins: My name is Robbins

Judge Wilson: "Robbins" R-O-B-B-I-N-S (spells Robbins)

Ms. Robbins: Correct

Judge Wilson: OK, And you are James Biedel

Mr. Biedel: I am your honor

Judge Wilson: For the record Ms. Robbins will you please state your name and address, you've got your name posted here on the petition. Mr. Biedel your correct mailing address

Mr. Biedel: Is it on the petition your honor?

Judge Wilson: I don't see it here (unintelligible)

Mr. Biedel: Would you like me to give it?

Judge Wilson: I would like it if you could please.

Mr. Biedel: My address is 3131 San Juan Avenue, Port Townsend, Washington

Judge Wilson: Thank You. . . . The record reflects Ms. Robbins, that you filed a petition asking the court for an order of protection from unlawful civil harassment from Mr. Biedel.

Mr. Biedel in this petition Ms. Robbins is asking that you be restrained from making any attempts to keep her under surveillance or any minors named in paragraph two, you are restrained from making any attempts to contact her or any minors as in paragraph two and further she is asking that you be resrained from entering or being within 100 feet of petitioners residence. That residence indicated on the record being 238 Rose Street in the City of Port Townsend.

Is there any reason, Ah. . . . I would advise you at this point "This is not a fact finding hearing" the issue for the court is whether the order should enter, and whether it should enter for a period for up to one year on those conditions.

Is there any reason that you should keep the petitioner Ms. Robbins under surveillance?

Mr. Biedel: There is no reason, however I believe the petition is unfounded.

Judge Wilson: This is not a fact finding hearing. That's not the purpose here. OK

Is there any reason that you should have contact with the petitioner of any of the minors? Are there any minors involved with this?

Mr. Biedel: No

Judge Wilson: Is there any reason you should maintain contact with her?

Mr. Biedel: Your honor, I do not feel that I should have to maintain a vigil making sure that I am not in her vicinity.

Judge Wilson: That really isn't responding to acts (unintelligible) it's deliberately contacting her. If you should meet her in a supermarket or a bus, that sort of thing is to be avoided at all possible. In other words it would be any overt act or attempt on your part to contact her in any way.

Is there any reason you need to do that?

Mr. Biedel: There may be, your honor

Judge Wilson: Could you site?

Mr. Biedel: If she was to be a part of city government as she was during the public meeting where this complaint started. I would want to be able to exercise my free speech rights to address her as a public official.

Judge Wilson: I think you could probably do that in some fashion other than putting the petitioner under fear. This would mean you would have to refrain from deliberately causing the petitioner any fear of harm or any kind of harassment.

Mr. Biedel: I understand your honor, however the complaint is just that. The complaint is based upon my free speech rights.

Judge Wilson: Well that's an issue that you'll have to raise elsewhere. Is there any reason that you should go within 100 feet of her residence at 238 Rose Street.

Mr. Biedel: Yes there is your honor.

Judge Wilson: Alright

Mr. Biedel: I have friends and acquaintance's [sic] which may live on that street.

Judge Wilson: May live on that street?

Mr. Biedel: Well, a friend that is a gardener lives near that location.

Judge Wilson: Well, you'll have to meet your friend elsewhere Mr. Biedel, the court is going to enter the order, and that order would restrain you from making any attempts to keep her under surveillance and this would mean any deliberate attempt on your part by overt act to put her in fear. The second part of this also, you're not to contact her in any way and this would be directly, indirectly, or through a third party until such time as an issue is raised later the court can modify the order if it finds that an issue is raised reasonably as you have indicated. The third part of this order that you're restrained from going within 100 feet of her residence at 238 Rose Street is also will be in effect [sic], this will be effect [sic] for a period of up to one year, that would be until the 11th day of August, 2001. The order enters at this time subject to those conditions. Do you understand now that contact would be any contact with her designed to harass or otherwise enter fear [sic] with her and, in any form or fashion? You understand that?

Mr. Biedel: Your honor, I do have a question, your honor

Judge Wilson: Certainly

Mr. Biedel: I believe that the petition is malicious, and the statements are false and I have evidence to show that is true, that the complaint is not accurate.

Judge Wilson: Well that is an issue for a trial, Mr. Biedel. That's something you'll have to arrange. I would suggest you discuss that issue with your attorney. That would be a separate civil proceeding. It's the purpose of the court here to simply see that you two are kept separate and apart and that you have no reason to communicate with each other or be in contact with each other. The clerk will see that you get a copy of the order, and discuss those other issues with your attorney, If you have a problem with it.

Mr. Biedel: Thank you, your honor

Ms. Robbins: thank you

I swear under penalty of perjury under the Constitution of the State of Washington that this is a true and accurate transcription of the hearing that took place in Jefferson County District Court August 11th, 2000 before the Honorable Lawrence Wilson Judge Pro Tem.

/s/ James W. Biedel — 08-18-2000
James W. Biedel — date
3131 San Juan Avenue
Port Townsend, Washington

SUPERIOR [ ] DISTRICT [X] COURT OF WASHINGTON FOR COUNTY OF JEFFERSON

Sally A. Robbins Petitioner vs. James Biedel Respondent	)	No. 8081 **ORDER FOR PROTECTION FROM UNLAWFUL CIVIL HARASSMENT** (ORAH) (Clerk's action required)

WARNING TO THE RESPONDENT: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 10.14 RCW and RCW 10.31.100 *and will subject a violator to arrest.* Willful disobedience of the terms of this order may also be contempt of court and subject you to penalties under chapter 7.21 RCW.

1. Notice of this hearing was served on the respondent by [ ] personal service [ ] service by publication pursuant to court order [X] other Jefferson Co. Sheriff

* * *

Based upon the petition, testimony, and case record, the court finds that the respondent committed unlawful harassment, as defined in RCW 10.14.080, and was not acting pursuant to any statutory authority, and **IT IS THEREFORE ORDERED THAT:**

[✓] Respondent is RESTRAINED from making any attempts to keep under surveillance petitioner and any minors named in paragraph 2 above.

[✓] Respondent is RESTRAINED from making any attempts to contact petitioner and any minors named in paragraph 2 above.

[✓] Respondent is RESTRAINED from entering or being within 100 ft. (distance) of petitioner's [✓] residence [ ] place of employment [ ] other:

At present petitioner's address is [ ] confidential [✓] the following:

238 Rose St., Port Townsend

IT IS FURTHER ORDERED that the Clerk of Court shall forward a copy of this order on or before the next judicial day to:

[X] Jefferson County Sheriff's Office,

[ ] _____ Police Department, **WHERE PETITIONER LIVES** which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

* * *

THIS ANTIHARASSMENT ORDER EXPIRES ON 8/11/01. If the duration of this order exceeds one year, the court finds that respondent is likely to resume unlawful harassment of the petitioner when the order expires.

DATED 8/11/00 at 2:35 PM

/s/ Lawrence Wilson
JUDGE/COURT COMMISSIONER

I acknowledge receipt of a copy of this Order:

/s/ Sally A. Robbins — 8/11/00
Petitioner — Date

I acknowledge receipt of a copy of this Order:

/s/ Jim Biedel — 8/11/00
Respondent — Date

James M. Bendell
Attorney at Law
P.O. Box 587
2535 Ivy Street
Port Townsend, WA 98368
(360) 379-5221 Facsimile (360) 379-3238
bendell@cablespeed.com

November 27, 2000

By facsimile only 206-340-4646

Greg Miller, Esq.
505 Madison Street, Suite 220
Seattle, WA 98104

RE: Antiharassment Orders

Dear Greg;

As you know I was referred to your office by the American Civil Liberties Union because I am also embroiled in an appeal of a Washington 'antiharassment order'. I laud your efforts to seek review before the Supreme Court.

Here in Jefferson County, this statutory scheme, which no doubt had a praiseworthy origin to stop domestic violence against women, has mutated into a type of 'catch-all' gripe session raised to the dignity of a court proceeding. Routinely, any person who does not wish to be contacted, or even talked to, by another person, can rush into court and obtain an Order essentially banishing someone from coming near them.

I can only compare the due process protections in this devolved procedure to the old *Bonanza* television

show wherein the Sheriff, seeing some suspicious characters ride into town, would go to the saloon and demand that they be gone by sunrise.

Sincerely,

/s/ Jim Bendell

Jim Bendell